

REMARKS

Reconsideration of the present application is respectfully requested. Claims 1-20 were pending. Claims 1 and 10 have been amended without introducing new matter. No claims have been added or cancelled. Thus, claims 1-20 remain pending.

The Examiner objected to the compact disc submission under 37 C.F.R. § 1.52(e)(3) and § 1.52(e)(4). The Applicants hereby submit two identical copies of the program listing of Appendix A on CD in accordance with 37 C.F.R. § 1.52, in the proper format. The discs are labeled as Copy 1 and Copy 2. Each disc is further clearly labeled with the title, application serial number, inventor, and creation date of the disc. Furthermore, the transmittal letter accompanying the discs is submitted in compliance with 37 C.F.R. § 1.52(e)(3). No new matter has been introduced in presenting the file in ASCII format. Therefore, the Applicant respectfully requests withdrawal of the rejection.

The Examiner objected to the drawings citing form PTO-948, draftsman objection to FIG. 5C. In this response, applicants have added new Figure 5C(1) and supplied Figures 5C(2)-5C(4) as replacement sheets for the previous details views of Figure 5C. Figure 5C(1) is included, in compliance with 37 C.F.R. § 1.84(h) to show the whole formed by the partial views of Figures 5C(2)-5C(4), as well as how the partial views are to be arranged in relation to the whole. Figures 5C(2)-5C(4) are detailed views of a larger database schema submitted in compliance with 37 C.F.R. § 1.84(b), drawn such that the complete figure can be assembled without concealing any part of any other view. Previous non-compliant versions of Figure 5C have been cancelled. No new matter has been introduced. Therefore, the Applicant respectfully requests withdrawal of the rejections.

The Examiner objected to informalities within the specification citing failure to comply with 37 C.F.R. § 1.96(b)(2)(ii). In this response, the Applicant has replaced the non-compliant computer program listing with a new program listing in compliance with 37 C.F.R. § 1.96. In particular, the new listing contains no more than 60 lines of computer program code with no more than 72 characters per line. No new matter has been introduced with the new listing of code. Therefore, the Applicant respectfully requests withdrawal of the objection.

The Examiner rejected claims 1, 7, 10, 16, and 20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,029,141 of Bezos et al. (hereinafter "Bezos"). The Applicant respectfully disagrees and submits that Bezos fails to teach each and every element as claimed by the Applicants in claims 1, 7, 10, 16, and 20.

Bezos describes a internet-based shopping system that allows a merchant web site to sell products utilizing multiple different Web sites, referred to as associate web sites (Bezos, column 1, lines 50-61; column 2, line 48 to column 3, line 7). The merchant site induces associate sites to market the merchant's products by providing referral incentives (Bezon, column 1, line 62 to column 2, line 18; column 11, lines 28-62). Thus, for example, a web site that reviews books is able to refer web traffic to the merchant site so that a reader can purchase the book from the merchantt (Bezos, Figure 6). In exchange, the merchant provides a referral credit/commission to the referring associate (Bezos, column 11, lines 28-62). However, products selected from multiple associate web sites are both directed to and fulfilled by the merchant web site as the associates only receives referral credits when a product is purchased from the merchant (Bezos, column 15, lines 51-60; column 2, lines 8-13).

With respect to claim 1, as amended, the applicants claim:

A method to be performed on a computing device for providing improved assignment of product orders to one or more fulfillers, the method comprising:

receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items;

ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria;

when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items; otherwise

splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items.

The Applicants respectfully submit that Bezos fails to teach each and every element as claimed in claim 1.

Claim 1 provides for “receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items; [and] ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria.” Bezos, however, fulfills orders at a merchant site where orders are merely referrals from multiple associate sites. The shopper, when selecting a link to purchase a product at an associate website, is directed automatically to the merchant site without regard for any desired qualities or rankings of the merchant site. The merchant site simply fulfills orders received without regard to a “ranking.” Therefore, Bezos fails to teach “receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items; [and] ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria.”

The Examiner set forth that Bezos discloses “receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items; [and]

ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria” by providing assignment of product orders to multiple fulfillers and ranking multiple fulfillers based on specified criteria (Office Action, page 5, paragraph 7a *citing* Bezos, column 2 to column 3, line 28). However, Bezos describes a single merchant fulfilling orders received as referral orders from multiple associate cites (Bezos, column 2, lines 48-65). The associate sites in turn market the merchant’s products, and offer a means whereby the associate can direct a potential purchaser to the merchant’s shopping cart in return for a commission (Bezos, column 2, line 66 to column 2, line 33). Thus Bezos describes a “mechanism for exposing the merchant’s Web site to the public, by encouraging other (associates) to set up outgoing links to the merchant’s site” (Bezos, column 3, lines 30-33). Merely allowing associate web sites to link to the merchant web site where the merchant alone will fulfill an order, however, fails to teach “receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items; [and] ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria.”

Further, the Applicant is unable to determine where Bezos describes “ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria” as Bezos only describes a single merchant as the single fulfiller. Bezos cannot logically describe ranking one or more merchants, because Bezos only describes a single merchant for fulfilling orders. Thus, Bezos also fails to describe “ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria.”

The Applicant further claims, with respect to claim 1, “when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the

most-favorable fulfiller that can fulfill all order items; otherwise splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items.” As discussed above, Bezos uses a single merchant site to fulfill orders referred to it from multiple associate web sites. Because the associate program is only describes as being applied to the one merchant website, an order could never be split among the most-favorable fulfillers. The Examiner argued that Bezos discloses “splitting the order” (Office Action, page 5, paragraph 7a *citing* Bezos, column 2, line 66 to column 3, line 7). The Applicant respectfully submits, however, that the referenced portion of Bezos merely describes a shopping cart which tracks which associate web site referred which order to the merchant. The shopping cart allows a purchaser to place orders with the single fulfiller/merchant from multiple web sites, but the order is never split as it is always placed with the merchant and fulfilled by the merchant. Therefore, since Bezos fails to describe or address the situation where an order may be split among fulfillers, Bezos fails to teach each and every element of claim 1.

Therefore, Bezos fails to teach each and every element as claimed by the Applicants in claim 1. The Applicant respectfully submits that Bezos fails to anticipate claim 1 under 35 U.S.C. § 102. Claim 7 depends from claim 1, and contains additional features and limitations. Thus, claim 7 is also not anticipated by Bezos.

Similarly amended claim 10 recites:

A method to be performed on a computing device for providing improved fairness when assigning product orders to one or more fulfillers, the method comprising:

receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items;

- determining desirable attributes for fulfilling the order among a set of available fulfillers;
- ranking the set of fulfillers from most favorable to least favorable, based on said desirable attributes;
- when all of the order items of the order can be fulfilled by a single fulfiller, assigning the order to the most-favorable fulfiller that can fulfill all of the order items; and
- when all of the order items of the order cannot be fulfilled by a single fulfiller, assigning the order to a subset comprising the most-favorable fulfillers that, collectively, can fulfill all order items of the order.

As discussed above, with respect to claim 1, Bezos fails to teach submitting an order for fulfillment at one or more fulfillers, ranking fulfillers, and splitting orders among multiple fulfillers. Therefore, since claim 10 similarly recites limitations directed to submitting an order for fulfillment at one or more fulfillers, ranking fulfillers, and splitting orders among multiple fulfillers, Bezos also fails to anticipate claim 10. Furthermore, claims 16 and 20 depend on claim 10, and include additional features and limitations. Thus claims 16 and 20 are also not anticipated by Bezos.

Claims 1, 6-10, 15, 16, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,402,335 of Spiegelhoff et al. (hereinafter "Spiegelhoff"). The Applicant respectfully disagrees and submits that Spiegelhoff fails to describe each and every element as claim in claims 1, 6-10, 15, 16, and 20.

Spiegelhoff describes a computerized system for placing orders of a retailer (Spiegelhoff, column 4, lines 37-62). The system is explicitly described as placing an order with a "primary" wholesaler and "secondary" wholesalers (Spiegelhoff, column 4, lines 37-45). The system must place an order with the primary wholesaler due to contractual obligations or some other preference of the retailer (Spiegelhoff, column 4, lines 43-59). However, once the minimum requirement associated with the "primary"

wholesaler is satisfied, the system searches secondary wholesalers for the remaining items in the order, regardless of whether the primary wholesaler can fulfill the entire order (Spiegelhoff, column 7, lines 6-23).

With respect to amended claim 1, the Applicant claims:

A method to be performed on a computing device for providing improved assignment of product orders to one or more fulfillers, the method comprising:

receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items;

ranking said one or more fulfillers from most favorable to least favorable, based on specified criteria;

when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items; otherwise

splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items.

The Applicant respectfully submits that Spiegelhoff fails to teach each and every element as claimed in claim 1. Claim 1 recites "when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items; otherwise splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items." Spiegelhoff merely orders a minimum amount from a primary wholesalers and then places the remainder of an order at secondary wholesalers. Thus even when an entire order can be fulfilled by a primary wholesaler, the order is still split between the primary and the secondary wholesalers, according the method of Spiegelhoff. Further, because the "primary" wholesaler is defined by Spiegelhoff in terms of a minimum order amount, no single secondary wholesaler will be able entirely fulfill an order. As a result, neither kind of wholesaler will be able to entirely fulfill an order

request. Therefore Spiegelhoff fails to teach “when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items; otherwise splitting the order by assigning fulfillment of individual order items to the most-favorable fulfillers that collectively can fulfill all order items.”

The Examiner argued that Spiegelhoff describes “splitting the order by assigning fulfillment of items to most-favorable fulfillers that can fulfill the order” (Office Action, page 6, paragraph 8a *citing* Spiegelhoff, Fig. 3; Column 7, lines 4-23). The Applicants respectfully submit, however, that the noted limitation occurs “when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items” is not satisfied. I.e., orders are split when they cannot be fulfilled entirely by one fulfiller. In the referenced passage and Figure, Spiegelhoff describes only purchasing a predefined minimum from a primary wholesaler and purchasing the remainder of an order with secondary wholeslaers, without discussing whether or not the primary wholesaler can fulfill the entire order. In fact, Spiegelhoff explicitly teaches away from “when all order items of the order can be fulfilled by a single fulfiller, assigning fulfillment of the entire order to the most-favorable fulfiller that can fulfill all order items.” Rather, Spiegelhoff automatically splits orders among wholesalers (Spiegelhoff, column 7, lines 5-10). Then if the minimum order requirement of the primary wholesaler is not met, the order is rearranged so that only the minimum order is placed with the primary wholesaler and the remainder of an order is placed with secondary wholesalers (Spiegelhoff, column 7, lines 10-20). Spiegelhoff fails to describe or suggest fulfilling an order entirely with the

primary wholesaler when the primary can fulfill an entire order, because Spiegelhoff automatically splits orders away from the primary wholesaler.

Therefore, Spiegelhoff fails to teach each and every limitation of claim 1. The Applicant respectfully submits that Spiegelhoff fails to anticipate claim 1. Claims 6-9 depend from claim 1, and include additional features and limitations. Thus, claims 6-9 are also not anticipated by Spiegelhoff. The Applicant respectfully requests withdrawal of the rejection.

Claim 10, as amended, similarly recites:

A method to be performed on a computing device for providing improved fairness when assigning product orders to one or more fulfillers, the method comprising:

receiving an order that requires fulfillment from one or more fulfillers, said order comprising individual order items;

determining desirable attributes for fulfilling the order among a set of available fulfillers;

ranking the set of fulfillers from most favorable to least favorable, based on said desirable attributes;

when all of the order items of the order can be fulfilled by a single fulfiller, assigning the order to the most-favorable fulfiller that can fulfill all of the order items; and

when all of the order items of the order cannot be fulfilled by a single fulfiller, assigning the order to a subset comprising the most-favorable fulfillers that, collectively, can fulfill all order items of the order.

As discussed above with, respect to claim 1, Spiegelhoff fails to teach assigning the order to the most-favorable fulfiller that can fulfill all of the order items. Spiegelhoff further fails to teach that if the original order could not be fulfilled by a single fulfiller, the order is split. Therefore, Spiegelhoff also fails to anticipate “when all of the order items of the order can be fulfilled by a single fulfiller, assigning the order to the most-favorable fulfiller that can fulfill all of the order items; and when all of the order items of the order cannot be fulfilled by a single fulfiller, assigning the order to a subset comprising the

most-favorable fulfillers that, collectively, can fulfill all order items of the order,” as claimed in claim 10. Furthermore, claims 15, 16, and 20 depend on claim 10, and include additional features and limitations. Thus, claim 15, 16, and 20 are also not anticipated by Spiegelhoff.

The Examiner rejected claims 2-5 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Spiegelhoff. As discussed above, with respect to independent claims 1 and 10, Spiegelhoff fails to teach each and every element as claimed in claims 1 and 10. Furthermore, the Examiner took official notice that “minimizing [shipping] cost is old and well established in the retail business.” However minimizing shipping cost fails to teach or suggest fulfilling an order entirely with the primary wholesaler when the primary can fulfill an entire order, because Spiegelhoff automatically splits orders away from the primary wholesaler. The official notice does not, therefore, supply the limitations missing from Spiegelhoff. Therefore, Spiegelhoff and the Official Notice do not render claims 1 and 10 obvious. Claims 2-5 and 11-14 depend from claims 1 and 10, respectively, and include additional features and limitations. Therefore, claims 2-5 and 11-14 are also not rendered obvious by Spiegelhoff in view of the Official Notice.

Claims 8-9 and 17-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bezos in view of ATIS. As discussed above, Bezos fails to teach or suggest each and every element of claims 1 and 10. Further, ATIS merely defines a hash function, and therefore also fails to teach or suggest the limitations deficient from Bezos. Therefore, Bezos and ATIS, alone or in combination, fail to teach or suggest the limitations of claims 1 and 10. Claims 8-9 and 17-19 depend from claims 1 and 10,

respectively, and contain additional features and limitations. Thus, claims 8-9 and 17-19 are also not rendered obvious by Bezos in view of ATIS.

Claims 8-9 and 17-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Spiegelhoff in view of ATIS. As discussed above, Spiegelhoff fails to teach or suggest each and every element of claims 1 and 10. Further, ATIS merely defines a hash function, and therefore also fails to teach or suggest the limitations deficient from Spiegelhoff. Therefore, Spiegelhoff and ATIS, alone or in combination, fail to teach or suggest the limitations of claims 1 and 10. Claims 8-9 and 17-19 depend from claims 1 and 10, respectively, and contain additional features and limitations. Thus, claims 8-9 and 17-19 are also not rendered obvious by Spiegelhoff in view of ATIS.

In view of the foregoing amendments and remarks, Applicants respectfully submit that all pending claims are in condition for allowance, and such action is respectfully requested. If a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Judith Szepesi at (408) 720-8300.

If there are any additional charges/credits, please charge/credit our deposit account no. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: _____

4/17/06



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In the Drawings

Please add new Figure 5C(1) after Figure 4.

Please cancel previously submitted Figure 5C showing a large scale view of a database schema.

Please replace the three previously submitted detailed views of Figure 5C with replacement sheets 1-3, listed as Figures 5C(2), 5C(3), and 5C(4).

Corrected drawing sheets have been submitted in compliance with 37 C.F.R. § 1.121(d) and § 1.84(h)(2). The new drawing sheets do not add any new matter. Applicant respectfully requests that the drawing objections be removed.